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How can a program similar to Rewards for Justice be established that offers rewards for information related to the financiers or key leaders of pirate organizations?

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**THIS MEMORANDUM IS A PRODUCT OF BAKER & MCKENZIE
WORKING IN PARTNERSHIP WITH PILPG AND THE
PILPG HIGH LEVEL WORKING GROUP ON PIRACY**

OBJECT AND PURPOSE: Legal memorandum to provide assistance to the Kenya Piracy Court and other cooperating state courts and to help to lay the groundwork for a Security Council-created Regional Piracy Court.

ISSUE #39: How can a program similar to Rewards for Justice be established that offers rewards for information related to the financiers or key leaders of pirate organizations?

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AUGUST 2012

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I. INTRODUCTION

A. Issue

PILPG High Level Working Group (“PILPG”) has asked us to assist in research and analysis on various issues to provide assistance to the United Nations and states concerned with prosecuting pirates operating off the coast of Somalia. This memorandum provides our analysis of the following question:

How can a program similar to Rewards for Justice be established that offers rewards for information related to the financiers or key leaders of pirate organizations?

B. Roadmap

This memorandum begins with a description of the U.S. State Department’s Rewards for Justice program. Then it identifies and analyzes the advantages and disadvantages of four potential alternatives for establishing a rewards program for obtaining information on the perpetrators of piratical acts: (1) expansion of the existing U.S. rewards programs to address piracy, particularly under the proposed expansion of the U.S. rewards programs to cover “transnational organized crime”; (2) establishment of a U.N. agency-administered rewards program; (3) establishment of a rewards program administered by a regional intergovernmental organization; and (4) establishment of a rewards program administered by a private-sector industry group. Recommendations and follow-up action items or questions still to be addressed are provided for each of the four options. Finally, this memo outlines the human rights issues related to establishing a rewards program to assist with the prosecution of suspected pirates.

II. THE REWARDS FOR JUSTICE PROGRAM

A. Description of Program

The 1984 Act to Combat International Terrorism, Public Law 98-533 (codified at 22 U.S.C. §2708), authorizes three U.S. rewards programs: Rewards for Justice (“RFJ”), Narcotics Rewards, and War Crimes Rewards (collectively, “U.S. Rewards Programs”). RFJ, administered by the U.S. State Department’s Bureau of Diplomatic Security, is a part of the U.S.’s fight against international terrorism.

¹ While the law governing the program is aimed at terrorism directed toward Americans, the U.S. shares information with other nations whose citizens are at risk as well. In the 1990s, the State Department began soliciting information on war crimes suspects, including individuals associated with genocide in Rwanda and the former Yugoslavia.² In 2001, the program experienced expansion as the USA PATRIOT Act increased funding for RFJ in response to the 9/11 attacks.³ Moreover, during this time, American citizens established a charitable, nonprofit fund called the RFJ Fund, which helped finance the program. The fund collected donations from

¹ See AllGov, Rewards for Justice, (2009), http://www.allgov.com/agency/Rewards_for_Justice.

² *Id.*

³ See P.L. 107-56, 115 Stat. 272 (2001); its full title is the “Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT).”

the general public, as well as proceeds from a license plate fundraiser program that operated in six states. This private effort to raise money for RFJ disbanded in 2008, likely due to dwindling fundraising efforts resulting from the passage of time following the 9/11 attacks.⁴ Since then, the program has been funded through industry contributions and appropriations from Congress. RFJ encourages civilians to report information that can assist in the arrest or conviction of anyone planning to commit or attempt international terrorist acts against U.S. persons or property by offering monetary incentives.

Tips can be submitted online through a secure form on the RFJ website (rewardsforjustice.net) or by mail, e-mail, phone or in person. RFJ provides a mailing address, e-mail address, and toll-free 1-800 number that sources can use. The identities of reward payment recipients and reward campaign respondents are not disclosed, and typically, no public announcement is made that a reward even has been paid. Protection and relocation services for informants and their families are considered on a case-by-case basis. The amount of the reward given to a recipient depends on various factors, including the threat posed by the terrorist, the severity of the danger or injury to U.S. persons or property, the value of information provided, the risk faced by a source and the source's family, and the degree of a source's cooperation in an investigation or trial.

The Secretary of State can authorize rewards ranging from under \$1 million to \$25 million, and over \$25 million if necessary, to anyone who provides actionable intelligence (e.g. information that leads to the location of a terrorist leader or disrupts terrorism financing). However, U.S., state, local, and foreign government employees generally are not eligible for a reward.⁵ Since its establishment, RFJ has paid more than \$100 million to over seventy individuals.⁶ The procedure for reward authorization begins with the nomination of an individual for a reward by a U.S. investigative agency (i.e. the Department of Defense or FBI) or a U.S. embassy abroad. An interagency committee then evaluates the information. In the final stage, the Secretary of State determines whether to approve of the reward and can change the reward amount within the terms of the law. If a federal criminal jurisdiction is involved in the matter, the Secretary of State must request the Attorney General's concurrence.

RFJ is publicized through its website, posters, matchbooks, paid advertisements on the radio and newspapers, the Internet, and other avenues as considered appropriate. Poster ads have been placed in airports, and "the availability of rewards has been published in domestic newspapers such as *The New York Times*, and internationally in *Al Hayat*, *Paris Match*, *Die Welt*, and *Pravda*."⁷

On June 27, 2012, members of the House of Representatives Committee on Foreign Affairs approved a bill that includes expanding the RFJ program to target the world's most

⁴ See Trisha Marczak, *New U.S. Bounty High in Comparison to Other Cases*, MINT PRESS NEWS, Apr. 12, 2012, available at <http://www.mintpress.net/new-us-bounty-high-in-comparison-to-other-cases>.

⁵ See Rewards for Justice, *Frequently Asked Questions*, <http://www.rewardsforjustice.net/index.cfm?page=faq&language=english>.

⁶ See Rewards for Justice, <http://www.rewardsforjustice.net>.

⁷ Douglas Kash, *Rewarding Confidential Informants: Cashing in on Terrorism and Narcotics Trafficking*, 34 CASE W. RES. J. INT'L L. 231, 244 (2002).

serious human rights abusers, with African warlord Joseph Kony as a top target. The bill would give the State Department the authority to publicize and pay rewards for information about individuals responsible for transnational organized crime or foreign nationals wanted by international criminal tribunals for committing war crimes or genocide.⁸ The current status of legislative action on this bill is discussed in Section III below.

As mentioned earlier, two other rewards programs exist under 22 U.S.C. §2708, and both are structurally identical to RFJ. Congress established the Narcotics Rewards program in 1986 as a tool to help the U.S. government identify violators of U.S. narcotics laws and hold them responsible for bringing illicit drugs into the country. As with RFJ, Narcotics Rewards gives the Secretary of State the authority to offer rewards for information leading to the arrest or conviction of major narcotics traffickers, with monetary incentives capped at \$5 million. The program is managed by several U.S. agencies, including the Department of State's Bureau of International Narcotics and Law Enforcement Affairs, Department of Justice, Department of Homeland Security, Immigration and Customs Enforcement, Drug Enforcement Administration, and Federal Bureau of Investigation.⁹ Narcotics Rewards has assisted in the arrests of individuals like Haji Bashir Noorzai, an Afghan heroin warlord and Taliban ally; Javier Arellano-Felix, head of Mexico's largest and most violent trafficking organization; and Eduardo Arellano-Felix and Gustavo Rivera-Martinez, key leaders of the Colombian Norte Valle Cartel and violent narcotics trafficking networks operating in South America.¹⁰

War Crimes Rewards is the third U.S. rewards program, and it specifically targets fugitives of the International Criminal Tribunal for Rwanda ("ICTR") and the International Criminal Tribunal for the Former Yugoslavia ("ICTY") because the U.S. supports criminal accountability for serious violations of international humanitarian law that occurred during the 1994 Rwandan genocide and in the former Yugoslavia in 1991. The U.S. assists these international tribunals by offering rewards of up to \$5 million for information leading to the arrest or conviction of ICTR indictees, as well as for intelligence leading to the detention of ICTY indictees. This rewards program is crucial in the fight to apprehend and prosecute war criminals.

According to the ICTR, on multiple occasions a fugitive has been arrested after being featured on RFJ's wanted list; typically, state authorities act on a warrant of arrest issued by ICTR or some other international warrant, and the U.S. is cited as assisting in these cases through their information program. Democratic Republic of Congo fugitive Bernard Munyagishari¹¹ and Colonel Tharcisse Renzaho of the 1994 Rwandan genocide¹² are two high profile criminals that the ICTR was able to arrest with the help of War Crimes Rewards. The

⁸ See Donna Cassata, *House Panel OKs Bill Expanding Rewards Program*, MONTEREY HERALD, Jun. 28, 2012, available at http://www.montereyherald.com/ci_20963547/house-panel-oks-bill-expanding-rewards-program.

⁹ See U.S. Dep't of State, Narcotics Rewards Program, <http://www.state.gov/j/inl/narc/rewards/index.htm>.

¹⁰ See U.S. DEP'T OF STATE, EMERGENCIES IN THE DIPLOMATIC AND CONSULAR SERVICE, available at <http://www.state.gov/documents/organization/137837.pdf>.

¹¹ See International Criminal Tribunal for Rwanda, *Bernard Munyagishari Arrested*, ICTR Doc INFO-9-2-675.EN, May 25, 2011, <http://www.unictr.org/tabid/155/Default.aspx?ID=1209>.

¹² See International Criminal Tribunal for Rwanda, *First ICTR Genocide Suspect Arrested in the Democratic Republic of Congo*, ICTR Doc INFO-9-2-325, Sept. 30, 2002, <http://www.unictr.org/tabid/155/Default.aspx?ID=278>.

ICTY operates similarly, with the mandate to prosecute individuals responsible for serious violations of international humanitarian law. Once the ICTY indicts persons for war crimes, War Crimes Rewards offers monetary incentives for any information that may lead to a transfer of those persons to the ICTY. As of 2005, the War Crimes Rewards program had paid over \$9.5 million to individuals for providing credible information.¹³

War Crimes Rewards is launching a multi-media ad campaign in Africa's Great Lakes Region to apprehend the last remaining fugitives before the ICTR closes;¹⁴ the U.N. Security Council has asked the tribunal to finish its work by December 2014, after which the International Residual Mechanism for Criminal Tribunals will function in the ICTR's place.¹⁵

B. Criticisms of Program

While the RFJ program has had some notable successes, it has failed to contribute to America's hunt for al-Qaeda members or in the fight against terrorism associated with the Ba'ath Party in Iraq and Abu Sayyaf in the Philippines. Robert L. Grenier, a former CIA station chief in Pakistan and former director of the CIA's counterterrorism center, has called the program "ineffective" and one that "hasn't produced results" or "particularly produced leads."¹⁶ For a time, RFJ generated so little useful information that the U.S. Embassy in Islamabad had shut it down, even though most al-Qaeda leaders are believed to be hiding in Pakistan. RFJ has proved more successful in areas like Iraq, where the U.S. military has had significant presence and control, as well as in locations like the Philippines or Thailand, where the U.S. government is viewed more positively, in contrast to places like Pakistan. In fact, a large portion of the more than \$100 million in rewards RFJ has paid out to date is concentrated in payments to civilians in Iraq and the Philippines.¹⁷

Many criticisms of the program revolve around its reward structure, which some say promotes reckless bounty hunting.¹⁸ RFJ also operates on the assumption that by placing a large enough bounty on a wanted terrorism suspect's head, anyone's loyalty can be bought; however, this disregards the strength of deep-seated tribal, religious, or local ties. U.S. Representative Mark Steven Kirk (R-III) has called huge cash rewards an abstract concept, especially "for many people living in the impoverished tribal regions of northwestern Pakistan."¹⁹ On the other hand, the monetary incentives that RFJ offers may encourage people in these countries to report innocent people in the hopes of receiving a reward.²⁰

¹³ See OFFICE OF WAR CRIME ISSUES, AT LARGE PERSONS PUBLICLY INDICTED FOR WAR CRIMES IN THE FORMER YUGOSLAVIA (Jul. 27, 2005), available at http://2001-2009.state.gov/s/wci/us_releases/fs/17598.htm.

¹⁴ See "Emergencies in the Diplomatic and Consular Service," *supra* note 10.

¹⁵ See U.N. News Service, *UN Genocide Tribunal in Rwanda Swears-in Judges Selected to Finish Its Work*, U.N. NEWS CENTRE, May 7, 2012, <http://www.un.org/apps/news/story.asp?NewsID=41938>.

¹⁶ Craig Whitlock, *Bounties a Bust in Hunt for Al-Qaeda*, WASH. POST, May 17, 2008, http://www.washingtonpost.com/wp-dyn/content/article/2008/05/16/AR2008051603921_2.html?hpid=topnews&sid=ST2008051801013.

¹⁷ See Scott Stewart, *Why US Bounties on Terrorists Often Fail*, Stratfor Global Intelligence, Apr. 12, 2012, <http://www.stratfor.com/weekly/why-us-bounties-terrorists-often-fail>.

¹⁸ See AllGov, *supra* note 1.

¹⁹ Whitlock, *supra* note 16.

²⁰ See AllGov, *supra* note 1.

Moreover, potential informants may be discouraged to come forward with actionable intelligence because of “skepticism that the United States would deliver the money and protect”²¹ them if necessary. In the past, RFJ has denied rewards to some informants while granting them to others. For example, in January 2008, Clarence Prevost, a Minnesotan flight instructor, was presented with a \$5 million check for flagging suspicious behavior by al-Qaeda operative Zacarias Moussaoui. Two others who submitted tips did not receive awards.²²

The fact that RFJ submissions are received and reviewed by the U.S. also can discourage potential informants from providing information. Arthur Keller, a former CIA case officer posted in Pakistan in 2006, says that people may not “necessarily trust the U.S.”²³ and are unsure “who to turn to or who to trust.”²⁴ Local factors must be taken into context, but RFJ’s structure ignores the dangers and intimidation that civilians may face from terrorist organization sympathizers, particularly if these potential informants become associated with the U.S.

Lastly, there are criticisms that RFJ has a weak publicity campaign and has largely failed to communicate with the audience it needs to reach. While it does make efforts to publicize in areas like airports (e.g. in December 2006, RFJ distributed wanted posters featuring twenty-six suspects in dozens of airports), little knowledge exists about the program in rural areas or other places where people may be more likely to have valuable information regarding terrorists. Ad campaigns tend to be limited to the U.S. Moreover, RFJ’s promotional materials can cause inefficiency, as well as display cultural insensitivity. Sometimes advertisements “bog down investigators by encouraging calls from crackpots” who submit unhelpful tips, and some advertisements also have been criticized in the past for “remarkable ignorance of Muslim culture.”²⁵

III. PROPOSAL FOR A U.S.-BASED PIRACY REWARDS PROGRAM

A. Overview

In early 2010, the U.S. government completed a comprehensive review of the current state of organized crime all over the world, the first such review since 1995.²⁶ The study found that much had changed in the nature of organized crime. Organized crime was no longer bound to regional networks, and it no longer specialized in a particular criminal endeavor.²⁷ Instead, it had become a transnational enterprise that engaged in a wide range of illicit activity.²⁸ The study also found that unlike earlier criminal enterprises incidentally interacting with terrorist groups,

²¹ Whitlock, *supra* note 16.

²² See Greg Gordon & Mary Lynn Smith, *Moussaoui Informant Gets \$5 Million; Two Overlooked*, STARTRIBUNE, Jan. 24, 2008, available at <http://www.startribune.com/local/14294877.html>.

²³ Whitlock, *supra* note 16.

²⁴ *Id.*

²⁵ AllGov, *supra* note 1.

²⁶ THE WHITE HOUSE, STRATEGY TO COMBAT TRANSNATIONAL ORGANIZED CRIME: ADDRESSING CONVERGING THREATS TO NATIONAL SECURITY 3 (2011), available at <http://www.whitehouse.gov/sites/default/files/microsites/2011-strategy-combat-transnational-organized-crime.pdf>.

²⁷ *Id.*

²⁸ *Id.*

these transnational organized criminal enterprises were fluid, overlapping and integrating with terrorist groups.²⁹

Congress is currently considering legislation to expand the scope of its rewards program to include “transnational organized crime”.³⁰ As applicable to the rewards program, transnational organized crime would include “racketeering activity that involves at least one jurisdiction outside the United States.”³¹ By the terms of the legislation, “racketeering” would be defined under section 1961 of title 18 of the United States Code, which identifies “racketeering” as “any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or dealing in a controlled substance.”³² Because piracy in the Arabian Sea includes threats involving murder, kidnapping, robbery, and extortion and involves at least one jurisdiction outside of the U.S., such piracy should fall within the purview of transnational organized crime. The proposed legislation has been presented in House and Senate bills that are substantially identical.³³ In the House, the legislation has been incorporated into the much larger Foreign Relations Authorization Act, Fiscal Year 2013.³⁴ As such, without further activism or support, the passage of a transnational organized crime rewards program is currently tied to the status of the comprehensive Foreign Relations Authorization Act.

Although activities undertaken by pirates appear to fall under the definition of transnational organized crime in the proposed legislation, piracy is not one of either bill’s focuses. For example, the unincorporated House Bill expresses that the “Sense of Congress” is “that the rewards program of the Department of State should be expanded in order to [...] address the growing threat to important U.S. interests from transnational criminal activity, such as intellectual property rights piracy, money laundering, trafficking in persons, arms trafficking, and cybercrime”³⁵ There is no mention of maritime piracy.

However, the President’s “Strategy to Combat Transnational Organized Crime” (“Strategy”), issued in July 2011, supports the argument that transnational organized crime includes acts of piracy.³⁶ Among other elements of the President’s Strategy is “[a] new rewards program [that] will replicate the success of narcotics rewards programs in obtaining information that leads to the arrest and conviction of the leaders of transnational criminal organizations that pose the greatest threats to national security.”³⁷ While the Strategy does not identify the Horn of Africa or other regions affected by piracy as “Regional Priorities” for such a program,³⁸ it specifically notes the contribution of piracy to government instability in Somalia as an example

²⁹ *Id.*

³⁰ Foreign Relations Authorization Act, Fiscal Year 2013, H.R. 6018, 112th Cong. § 207 (2012); H.R. 4077, 112th Cong. (2012); S. 2318, 112th Cong. (2012).

³¹ *Id.*

³² H.R. 6018 § 207(a)(6); H.R. 4077 § 3(a)(6); S. 2318 § 3(a)(6).

³³ H.R. 4077; S. 2318.

³⁴ H.R. 6018.

³⁵ H.R. 4077 § 2(b)(1).

³⁶ WHITE HOUSE STRATEGY, *supra* note 26.

³⁷ *Id.* at 1.

³⁸ *Id.* at 9-11 (regions identified are the Western Hemisphere, Afghanistan/Southwest Asia, Russia/Eurasia, the Balkans, West Africa, and Asia/Pacific.)

of the need for enhanced enforcement against transnational organized crime.³⁹ The Strategy further calls for “aggressive targeting” of organizations that practice “piracy on the high seas” and for U.S. authorities to “attack these organizations as close to the source as we can by forward deploying our law enforcement and intelligence assets.”⁴⁰

B. Organization

As described in Section II above, the Executive Branch currently administers three U.S. Rewards Programs under 22 U.S.C. 2708: Rewards for Justice, Narcotics Rewards, and War Crimes Rewards.⁴¹ As currently proposed, a transnational organized crime rewards program would mirror the Narcotics Rewards program.⁴² As with the other rewards programs, the nominating committee for Narcotics Rewards is comprised of an interagency contingent that includes members from the “Department of Justice, Department of Homeland Security, Immigration and Customs Enforcement (“ICE”), the Drug Enforcement Administration (“DEA”), Federal Bureau of Investigation (“FBI”), and other interested U.S. agencies.”⁴³

For piracy in particular, it would be best to include members from the U.S. government’s Counter-Piracy Steering Group (“CPSG”) on the nominating committee.⁴⁴ The CPSG is an interagency group “created to implement the National Action and Partnership Plan to Combat Piracy off the Horn of Africa.”⁴⁵ Another option would be to empower CPSG with the ability to nominate rewards candidates for the transnational organized crime rewards program. Indeed, for a vastly more comprehensive rewards program like the proposed, it may be a better to have separate nominating committees for different facets of the program or to have subject-matter focused subcommittees that make recommendations to the nominating committee.

C. Advantages

1. Credibility and Reliability

Expanding U.S. Rewards Programs to include transnational organized crime would increase the number of rewards targets and very likely the number of rewards disbursed. This could lead to wider publicity of U.S. Rewards Programs and greater assurance to potential program participants that the rewards being offered are genuine. Furthermore, the ability to directly associate U.S. Rewards Programs with other enforcement capabilities of the U.S., including those led by agents on the ground in affected areas, may further contribute to increased

³⁹ *Id.* at 5.

⁴⁰ *Id.* at 24.

⁴¹ *State Depts. Rewards Programs: Performance and Potential*, 112th Cong. (2012) (statements of Rep. Ed Royce, Chairman, H. Subcomm. on Terrorism, Nonproliferation, and Trade), available at <http://www.hsdl.org/?view&did=704468>.

⁴² *Id.* (statement of M. Brooke Darby, Deputy Assistant Secretary of State, Bureau of Int’l Narcotics and Law Enforcement).

⁴³ Narcotics Rewards Program, *supra* note 9.

⁴⁴ See U.S. Dep’t of State, The United States Response to Piracy off the Coast of Somalia, <http://www.state.gov/t/pm/ppa/piracy/c32662.htm>.

⁴⁵ *Id.*

publicity of availability of rewards to possible program participants and encourage interaction with physical agents with and from whom program participants can deal and expect protection.⁴⁶

2. Broad Scope

A rewards program focused on preventing piracy in the Arabian Sea alone may quickly become obsolete. Even if the program is successful, a concerted effort to combat piracy may induce pirate organizations to commit crimes outside the traditional definition of piracy and morph into organizations engaging in other forms of transnational organized crime.⁴⁷ A broader transnational organized crime rewards program would continue to fight pirate organizations in all of their incarnations, thereby preventing international-scale illegal operations in general. For example, a pirate organization that refocused its activity to land-based kidnapping,⁴⁸ for example, would not escape the enforcement measures offered by such a program.

3. Protection and Relocation of Program Participants

One of the problems that any piracy rewards program will need to address is the danger and intimidation that informants may face. In particular, international or regional rewards programs may face complex transnational issues regarding the relocation and protection of program participants. By contrast, expansion of a U.S. Rewards Program may provide a more unilateral relocation procedure. U.S. Rewards Programs authorize the U.S. Attorney General to grant an S Visa to anyone who, in his or her determination, possesses “reliable” information “essential” to a criminal investigation and who is willing to participate in the investigation.⁴⁹ The visa is extended to the participant’s family as well.⁵⁰ S Visas are non-immigrant visas, but the Attorney General can adjust them if the participant “supplie[s] information as agreed, and the information has contributed substantially to a successful criminal investigation.”⁵¹ Up to 200 informants can receive an S Visa per fiscal year for providing information on a criminal matter (not including family members).⁵²

Relocation to the U.S. is a multi-faceted and uncertain process. Moreover, if the U.S. is planning to undertake a new comprehensive program to combat transnational organized crime, an increase in the number of S Visas that can be granted per fiscal year may be necessary. Nonetheless, a process is in place to relocate participants to the U.S. Thus, a U.S. Rewards Program will benefit from an already existing relocation process and from clarity over which state party will ultimately be responsible for the safety of program participants.

⁴⁶ See WHITE HOUSE STRATEGY, *supra* note 26 (discussing “forward deployment” of law enforcement in an effort to “attack these organizations as close to the source as we can”); Whitlock, *supra* note 16 (discussing the greater success of rewards programs wherein agents are in direct contact with informants); see also Kash, *supra* note 7.

⁴⁷ See Jay Bahadur, *Somalia Pirates Adopt Troubling New Tactics*, THE DAILY BEAST, Jan. 31, 2012, <http://www.thedailybeast.com/articles/2012/01/31/somalia-pirates-adopt-troubling-new-tactics.html>.

⁴⁸ See *id.*

⁴⁹ KARMA ESTER, IMMIGRATION: S VISAS FOR CRIMINAL AND TERRORIST INFORMANTS 2 (CRS 2005), available at <http://www.fas.org/sgp/crs/terror/RS21043.pdf>.

⁵⁰ *Id.*

⁵¹ *Id.* at 3.

⁵² 8 U.S.C. § 1184(k)(1).

D. Disadvantages

1. Perception that the U.S. is Acting Unilaterally

A more aggressive and invasive U.S. policy towards transnational organized crime may be considered an over-extension of U.S. authority by other countries and the international community. Because transnational organized crime is inherently an international problem with trans-jurisdictional enforcement demands, a broader coalition or international body may be a preferred solution. This may be especially true in the piracy context, where enforcement may demand action in foreign countries without the support of the local government, or may require cooperation between multiple jurisdictions.⁵³

On the other hand, expansion of the U.S. Rewards Programs to encompass transnational organized crime (and by extension, to piracy) may not necessarily involve the U.S. taking more aggressive action outside of its borders. For example, the mere fact that a pirate target is a reward candidate under a U.S.-based rewards program may give an international, regional or national piracy court more leverage in applying pressure on local authorities to turn over the target.⁵⁴

Still, this may not overcome the perception that the U.S. is acting unilaterally, which could negatively impact the perceived legitimacy of the rewards program. Many in the international community view the U.S. as a nation that oversteps the boundaries of its authority and interferes with the domestic policies of other nations while refusing to abide by international law. Further, many states' constitutions, particularly in Africa, recognize the supremacy of international law, and a U.S. Rewards Program would not benefit from the perceived legitimacy and authority a program established by U.N. resolution or treaty may have in those nations.

Regardless of how the program is implemented, the perception of the program will be important to its effectiveness. Participants may dislike or be distrustful of the U.S., or they may be among those who believe that the U.S. too often acts unilaterally and in its own interest in the context of international problems. A more international rewards program may be able to avoid such criticism against the U.S. and be more appealing to a greater pool of prospective participants.

2. Burden on the U.S.

A U.S. Rewards Program would place the burden of an international problem on the U.S. Presumably, the U.S. will be solely responsible for paying rewards for program targets and funding the less publicized but probably more dramatic costs of administering the rewards program and coordinating rewards with actual enforcement efforts. The U.S. may also be reluctant to share information with other nations and international organizations for security or strategic reasons. As a result, the U.S. may bear the costs and responsibilities of using

⁵³ See U.N. Sec. Council, Report of the Monitoring Group on Somalia Pursuant to Sec. Council Resolution 1853, § III.C (March 10, 2010).

⁵⁴ Alison Marston Danner, *Enhancing the Legitimacy and Accountability of Prosecutorial Discretion at the International Criminal Court*, 97 AM. J. INT'L L. 510, 535 (2003).

American forces, rather than an international coalition, to take action in response to any information received.

Considering that a potential U.S. Rewards Programs focused on transnational organized crime would be expanded to focus more directly on criminal operations abroad than on activities with direct operational connections to the U.S., it may be possible to solicit participation by other nations in the operation of the program, possibly including but not limited to granting another nation the ability to name a citizen of such nation to the program's nominating committee that selects rewards candidates. The international community would gain by having a broader view of which piracy-related targets are most important, and the U.S. would benefit in not having to shoulder the entire financial burden of the program. On the other hand, the U.S. may want the rewards program to focus on problems that affect the U.S. the most, and foreign nations may consequently be unwilling to contribute, as the ultimate discretion for awards would be in the hands of the U.S.⁵⁵ Furthermore, the U.S. may be reluctant to solicit foreign parties for the governance of an American government program.

On a related matter, as noted in Section III.C.3 above, it may be necessary to relocate program participants following their cooperation with the rewards program to ensure their safety. The S Visa program places limits on the number of participants who can be granted S Visas,⁵⁶ and it is unknown whether the U.S. would be willing to accept the burden of relocating and protecting piracy rewards program participants. If an international rewards program was implemented, the international community could share the burden of relocation and provide a wider array of options for relocation.

3. Piracy May Not Be Brought into Focus

Relying on a U.S. Rewards Program for transnational organized crime to address piracy may be problematic, because it could be difficult to bring focus to combating piracy. Although the President's Strategy discusses piracy as a concern related to transnational organized crime, it does not identify the Horn of Africa as a Regional Priority.⁵⁷ Piracy continues to be viewed as more of a regional problem than other forms of racketeering of general international concern, such as international human or narcotics trafficking.⁵⁸ Furthermore, pirates are known to rely on direct cash-to-hand transactions for ransom payments,⁵⁹ as opposed to the inter-organizational and inter-jurisdictional cash flows that U.S. efforts against transnational money laundering are

⁵⁵ 22 U.S.C. § 2708(b)

⁵⁶ 8 U.S.C. § 1184(k)(1).

⁵⁷ See *supra* note 38 and accompanying text.

⁵⁸ See STRATEGY, *supra* note 26 at 3 (explaining that the need for United States enforcement against transnational organized crime is a result of transnational organized crime's expansion from a regional problem to a global one).

⁵⁹ See Times Topics, *Piracy at Sea*, N.Y. TIMES, May 15, 2012,

http://topics.nytimes.com/top/reference/timestopics/subjects/p/piracy_at_sea/index.html; David Clarke & Mohamed Ahmed, *Exclusive: Somali Pirate Ransoms Skirt U.S. Directives*, REUTERS, Aug. 8, 2011,

<http://www.reuters.com/article/2011/08/08/us-somalia-piracy-ransoms-idUSTRE7772DW20110808>; Robyn Hunter, *How Do You Pay a Pirate's Ransom?*, BBC, Dec. 3, 2008, <http://news.bbc.co.uk/2/hi/africa/7752813.stm>.

currently focused on.⁶⁰ If indeed the U.S. ends up shouldering the financial and administrative burdens of a rewards program, the program will likely focus on problems that have the most direct impact on the U.S. Thus, if piracy is seen as a regional problem with relatively little impact on the U.S., a U.S. Rewards Program will probably not give much attention to piracy concerns unless the program is specifically mandated to do so.

E. Recommended Further Action

To further pursue development of a U.S.-based piracy rewards program, PILPG should consider taking the following actions:

1. Legislative advocacy supporting the current proposed legislation expanding the scope of U.S. Rewards Programs to include transnational organized crime.
2. Advocacy for a greater focus on piracy within the scope of U.S. policy towards transnational organized crime. This would have legislative and administrative components. For the legislative component, language could be added to the pending rewards program legislation to expressly indicate a focus on piracy. For the administrative component, the nominating committee deciding which candidates should be nominated for transnational organized crime rewards should include members who have direct relationships to government efforts against piracy (e.g. CPSG).
3. Exploration of possible participation by other nations in a U.S. Rewards Program. As U.S. Rewards Programs expand to focus on targets who are not directly tied to the U.S., it may make sense to begin building a coalition of countries with similar interests that can contribute to and participate in these rewards programs. Not only would this reduce the burden on the U.S., but it also would increase inter-jurisdictional credibility of enforcement and alert authorities to issues outside of the ones most closely tied to U.S. self-interest. The U.S. may also need assistance with relocation and protection of participants from other nations.

IV. PROPOSAL FOR A U.N.-BASED PIRACY REWARDS PROGRAM

A. Overview and Organization

The following section identifies the existing U.N. offices that would be best suited to administering a piracy rewards program and the advantages and disadvantages of establishing an U.N.-based piracy rewards program.

⁶⁰ See generally *Combating Transnational Organized Crime*, 112th Cong. (2012) (focusing on money laundering through suspect institutions and jurisdictions), available at <http://www.gpo.gov/fdsys/pkg/CHRG-112hhrg72786/pdf/CHRG-112hhrg72786.pdf>.

a. U.N. Office on Drugs and Crime

The U.N. Office on Drugs and Crime (“UNODC”), headquartered in Vienna, appears to be the U.N. organization most involved in combating piracy and could be a logical choice for leading a potential U.N.-based piracy rewards program. Established in 1997, UNODC is a global leader in the struggle against illicit drugs and international crime and the lead United Nations entity for delivering legal and technical assistance to prevent terrorism. UNODC operates 54 field offices around the world, covering more than 150 countries.⁶¹

UNODC established a UNODC counter-piracy program (“CPP”) in 2009, and CPP is now working in six countries in the Somali Basin region.⁶² CPP is a joint endeavor with the European Commission, and focuses on fair and efficient trials and imprisonment in regional centers, humane and secure imprisonment in Somalia, and fair and efficient trials in Somalia.⁶³

CPP supports efforts to detain and prosecute piracy suspects according to international standards of rule of law and respect for human rights. It assists Kenya, Seychelles, Mauritius, Tanzania, and Maldives with judicial, prosecutorial, and police capacity-building programs as well as office equipment, law books, and specialist coast guard equipment. CPP is also assisting Somalia with upgrades to its prisons and courts so that Somali pirates convicted in other countries can serve sentences in their home country. UNODC has completed work on a new prison in Hargeisa, the capital of Somaliland, and is currently constructing and refurbishing prisons in Puntland, Somalia. One of CPP’s goals is to ensure that regional states do not have to hold foreign prisoners long term and that Somali prisoners have access to their own culture, families, and appropriate skills training during their prison sentences.⁶⁴

It is possible that a piracy rewards program could benefit from the expertise and experience of UNODC, particularly via its administration of CPP. In addition, CPP could help ensure that tips received through the piracy rewards program are efficiently acted upon. Finally, knowing that pirates will be treated humanely and allowed to remain in Somalia to serve their sentences may encourage people to provide tips to the program.

b. U.N. Political Office for Somalia

The U.N. Political Office for Somalia (“UNPOS”) in Mogadishu could also play a valuable role in a piracy rewards program.⁶⁵ The U.N. Secretary-General established UNPOS in April 1995 to help advance the cause of peace and reconciliation through contacts with Somali leaders, civic organizations, and concerned states and organizations.⁶⁶ UNPOS is a special political mission, supported and overseen by the U.N. Department of Political Affairs. UNPOS

⁶¹ See U.N. OFFICE ON DRUGS AND CRIME [UNODC], UNODC ANNUAL REPORT 2010 (2010), available at http://www.unodc.org/documents/frontpage/UNODCAnnual_Report_2010_LowRes.pdf.

⁶² See U.N. Office on Drugs and Crime [UNODC], UNODC and Piracy, <http://www.unodc.org/easternafrika/en/piracy/index.html>.

⁶³ See UNODC ANNUAL REPORT 2010, *supra* note 61.

⁶⁴ See UNODC and Piracy, *supra* note 62.

⁶⁵ See U.N. Political Office for Somal., <http://unpos.unmissions.org>.

⁶⁶ See U.N. Political Office for Somal., UNPOS Mandate, <http://unpos.unmissions.org/Default.aspx?tabid=9706&language=en-US>.

has supported various initiatives aimed at promoting peace and national reconciliation in Somalia, including efforts by the Government of Djibouti that led to the formation of the Transitional National Government (“TNG”) of Somalia in 2000. From 2002 to 2004, UNPOS supported the Somali National Reconciliation Conference under the auspices of the Intergovernmental Authority on Development (“IGAD”), resulting in the formation of the current Transitional Federal Government (“TFG”) which relocated to Somalia in 2005.⁶⁷

In light of progress in the reconciliation process, UNPOS is preparing for an expansion of its activities in Somalia. In endorsing these expansion plans, the Security Council authorized UNPOS to promote reconciliation through dialogue between Somali parties, to assist efforts to address the “Somaliland” issue, to coordinate support for the peace process by Somalia’s neighbors and other international partners, and to play a leading political role in peace-building activities.⁶⁸

The mandate for UNPOS, as per Security Council Resolution 1863 (2009), *inter alia*:

stresses the need to make progress on the political process in Somalia; requests UNPOS to assist, in conjunction with regional and international donors partners and other interested parties, in supporting the effective re-establishment, training, and retention of inclusive Somali security forces, including military, police and judiciary; and requests that UNPOS provide good offices and political support for efforts to establish lasting peace and stability in Somalia and to mobilize resources and support from the international community for both immediate recovery and long-term economic development.⁶⁹

A piracy rewards program aimed at combating piracy in the Arabian Sea seems to fit into UNPOS’s mandate because combating piracy is important to maintaining peace and stability in Somalia and establishing long-term economic development. In fact, UNPOS has already been involved in some anti-piracy efforts, including local media campaigns to combat piracy, and could be particularly valuable as an on-the-ground location where informants can report information on piracy in person. While RFJ encourages people with information on terrorism to go to the nearest U.S. Embassy or Consulate to relay information, few countries currently have functioning diplomatic offices in Somalia, so making UNPOS accessible for piracy informants could be particularly valuable.

A UNODC and UNPOS partnership, which would provide strong and stable institutional support and ensure a strong local component to the program, may provide the most effective U.N. piracy rewards program by utilizing the core competencies of both agencies.

c. Rewards Process

In terms of determining eligibility and the amount of rewards granted through the program, the U.N. may want to consider the establishment of an inter-organizational rewards

⁶⁷ See U.N. Political Office for Somal., UNPOS Background in Somalia, <http://unpos.unmissions.org/Default.aspx?tabid=9707&language=en-US>.

⁶⁸ *Id.*

⁶⁹ See UNPOS Mandate, *supra* note 66.

committee similar to the RFJ program's CPSG that determines eligibility for and the amount of rewards. The committee could include representatives from UNODC, UNPOS, and the Contact Group on Piracy Off the Coast of Somalia (a voluntary ad hoc international forum created in 2009 that brings together countries, organizations, and industry groups with an interest in combating piracy).⁷⁰ The committee could also include government representatives from countries especially affected by piracy or invested in the fight against piracy. Other potential members of the committee could be representatives from the International Maritime Organization, INTERPOL, NATO, and various companies or industry groups. Alternatively, for a more streamlined and less bureaucratic rewards determination process, the director of UNODC and/or UNPOS could determine rewards.

Relevant factors in determining eligibility and the amount of rewards could be based on the RFJ program's criteria, including the threat posed by a given leader or financier, the severity of the danger or injury to persons or property, the value of the information provided, the risk faced by a source and his or her family, and the degree of a source's cooperation in an investigation or trial.

B. Advantages

1. Strong, Established Partnerships

UNODC has existing partnerships with governments, other United Nations entities, international organizations, civil society groups, development banks, and the private sector. UNODC also works with domestic and international media and online and social media to raise awareness among stakeholders and the general public about the challenges transnational criminal activities pose and effective approaches to confront them.⁷¹ These partnerships could be leveraged to obtain funding and other important resources needed to establish and run a piracy rewards program.

2. Experience

UNODC already has extensive experience combating organized crime, and piracy in particular, through its Counter-Piracy Program. In addition, as mentioned above, UNODC works with and has formulated relationships with domestic and international media, which would be beneficial in publicity efforts and receiving support for a piracy rewards program.

3. Established Anti-Piracy Media Program

In addition to CPP, UNPOS has combated piracy through the "Utilizing Media to Prevent and Combat Piracy" program that it administers. This program could be utilized and expanded to provide publicity for the piracy rewards program. The primary objective of the "Utilizing Media" project is to inform the Somali population of the negative effects and long-term implications of piracy on their lives in order to prevent youth from joining in piracy. The program highlights the dangers and threats of piracy, presents alternatives, and counters the

⁷⁰ See U.S. Dep't of State, Contact Group on Piracy off the Coast of Somalia, <http://www.state.gov/t/pm/ppa/piracy/contactgroup/index.htm>.

⁷¹ See UNODC ANNUAL REPORT 2010, *supra* note 61.

popular local belief that pirates are to be admired because they protect the Somali coastline. The program would allow UNPOS to contract with local radio and television services, print media, and websites to deliver counter-piracy messages. UNPOS has planned to disseminate leaflets, hold discussions on local talk shows, televise public service announcements, and hold cultural performances like plays, poetry, song, and dance. UNPOS also has engaged local communities in workshops, seminars, forums, debates, and discussion groups with religious leaders, elders, and journalists.⁷²

4. On-the-Ground Locations

With few diplomatic offices or non-profit organizations operating in Somalia, there are not many viable on-the-ground locations where potential informants could go to provide tips. Since UNPOS already has an office open in Somalia, it could serve as an on-the-ground location where people can go to provide tips. In addition, since the U.N. has offices in neighboring African countries like Kenya and Ethiopia, these other offices could be made available for informants. Before making U.N. offices available, however, the U.N. would need to consider implementing safety precautions and training their personnel, etc.

5. Ability to Influence and Work with Governments

Given the U.N.'s international legitimacy and strong partnerships with member state governments, a U.N.-run program would perhaps result in a secure funding source, as the U.N. could solicit contributions from member states. Moreover, the U.N. could work with member state governments to provide protection for informants and their families. For example, the U.N. could work with the U.S. government to utilize and possibly expand the S Visa program so that U.S. visas are offered to people who provide information leading to the capture of piracy leaders or financiers, as well as to give these people the protection that they need.⁷³ Given the instability in Somalia, partnerships with governments in neighboring countries would help ensure that tips received through the program are effectively acted upon and that piracy leaders and financiers are brought to justice.

C. Disadvantages

1. Funding

One potential concern regarding a U.N.-based approach to an anti-piracy tip program is funding for UNODC and its anti-piracy efforts. UNODC relies on voluntary contributions, mainly from governments, that comprise more than 90 percent of its budget. However, UNODC currently faces a funding challenge, as demand for UNODC services has increased but financial

⁷² See U.N. OFFICE ON DRUGS AND CRIME [UNODC], TRUST FUND TO SUPPORT THE INITIATIVES OF STATES COUNTERING PIRACY OFF THE COAST OF SOMALIA ANNUAL REPORT 2010 (2010), *available at* http://www.unodc.org/documents/easternafrika//piracy/Annual_Report_2010_Piracy_TF_eng_eBook.pdf.

⁷³ S Visas are available to aliens who provide critical, reliable information necessary to the successful investigation or prosecution of a criminal organization, and for aliens who provide critical, reliable information concerning terrorist organizations and who qualify for a reward under the Department of State's rewards program. See US Dep't of Justice, 1862 S Visa Program – Eligibility, http://www.justice.gov/usao/eousa/foia_reading_room/usam/title9/crm01862.htm.

support has not kept pace.⁷⁴ A new rewards program would potentially place further strain on UNODC's budget, through both the need to fund rewards and administer the program.

2. Safety and Feasibility

Making U.N. offices available for on-site informants may endanger U.N. employees and those around U.N. offices. Another issue is whether U.N. offices have the capacity for in-person piracy tip intakes.

D. Recommendations and Further Questions

1. Funding.

The U.N. should consider whether a piracy rewards program could be funded through the Trust Fund to Support the Initiatives of States to Counter Piracy off the Coast of Somalia, and if so, how to increase funding for the Trust Fund, which was created in 2010 with the objective of defraying the expenses associated with prosecuting pirates and to help fund other anti-piracy activities.⁷⁵ The U.N. should attempt to collect contributions from member states for a piracy rewards program, as many U.N. members have a strong interest in combating piracy. Moreover, since private companies and industry groups have a direct financial interest in combating piracy, the U.N. should solicit private donations as well.

Issues the U.N. should consider include:

- 1) Effectively and efficiently leveraging the U.N.'s authority to solicit the necessary contributions from member states.
- 2) Effectively soliciting private donations from shipping companies, insurance companies, and major maritime industry groups like BIMKO and INTERTANKO for use in a piracy rewards program.
- 3) Maintaining safety and feasibility of on-the-ground locations.

If safe and feasible, the U.N. should attempt to make U.N. offices available for in-person tip submissions. However, before doing so, the U.N. should evaluate the need for and the potential effectiveness of on-the-ground locations.

Questions the U.N. should consider include:

- 1) Would it be safe, feasible, and effective to provide and publicize on-the-ground locations?
- 2) What safety precautions need to be taken?

⁷⁴ See UNODC ANNUAL REPORT 2010, *supra* note 61.

⁷⁵ See TRUST FUND ANNUAL REPORT 2010, *supra* note 72. This may be a particularly good source of funding since one of the Fund's priorities is public communication initiatives.

- 3) What training do U.N. employees need for piracy tip intakes to be conducted safely and effectively?
 - 4) Could the U.N. also partner with governments and non-profit organizations in neighboring countries where there are diplomatic and non-profit offices in order to ensure the greatest number of locations and the most convenience possible?
2. Ensuring Cooperation and Safety of Informants

As with RFJ, the U.N. must be able to maintain confidentiality for informants in order to protect them as well as to raise credibility of the program and make potential informants more willing to come forward. It may be necessary to provide relocation for informants and their families on a case-by-case basis. In addition, the U.N. may want to provide some low-level pirates with immunity or reduced penalties in exchange for information leading to the capture of pirate leaders or financiers.

Questions the U.N. should consider include:

- 1) How can the U.N. ensure strict confidentiality and safety for those who provide tips?
 - 2) How can the U.N. work with member governments to ensure that those who need to be relocated are and, if necessary, provided with a new identity, source of income, housing, etc.?
 - 3) How can the U.N. effectively work with local, national, and international judicial and law enforcement officials, as there may be a need to protect some sources in the form of granting immunity from prosecution or reduced penalties?
3. Possible Partnership with INTERPOL

INTERPOL has a Global Database on Maritime Piracy that analyzes piracy networks and helps member countries identify and arrest high-value individuals.⁷⁶ The U.N. should consider working with INTERPOL in its effort to receive and process tips and, if possible, should utilize INTERPOL's Global Database on Maritime Piracy to analyze tips collected under the program.

4. Publicity of Program

The U.N. should consider using UNPOS's already established "Utilizing Media to Prevent and Combat Piracy" program for publicity. Moreover, given the high rate of cell phone

⁷⁶ See Press Release, INTERPOL, *Maritime Piracy Investigations Boosted by INTERPOL and NATO Framework on Information Sharing*, May 9, 2012, available at <http://www.interpol.int/News-and-media/News-media-releases/2012/PR041>.

usage in Somalia,⁷⁷ the U.N. should try working with phone companies to obtain phone numbers of the Somali population (with a focus on regions most affected by piracy); it could then either place automated phone calls or send automated text messages publicizing the program and telling people how to report piracy activities. Such automated messages would have the dual effects of publicizing the program to potential informants and serving as deterrents to any pirates who receive the messages.

Important considerations moving forward include:

- 1) How can the U.N. utilize electronic and print media to most effectively publicize a piracy rewards program?
- 2) Can the U.N. utilize UNPOS's media program to effectively publicize a piracy rewards program, and what changes and expansions would need to be made to the UNPOS program to make this possible?
- 3) What information channels are most heavily relied upon by people in regions most affected by piracy, and what are their attitudes toward pirates?
- 4) Is there any information about how people on pirate bases most often access media?
- 5) What are the best means to reach junior members of pirate bases who could lead authorities to senior members?
- 6) How can the publicity program be used to ensure possible informants that the information they provide will be truly confidential and that they will be offered protection if they come forward?
- 7) Could automated messages sent to cell phones be used to simultaneously publicize the program to potential informants and to deter others from piracy activities?

V. PROPOSAL FOR A REGIONAL PIRACY REWARDS PROGRAM

A. The Importance of Regional Authorities

Regional forces are integral to fighting piracy because they can most effectively combat piracy onshore.⁷⁸ Onshore efforts are usually the most effective piracy deterrents because they target the land bases that operate as safe havens for pirate operations.⁷⁹ Onshore efforts are also

⁷⁷ See Ibrahim Mohamed & Abdi Sheikh, *Somali Mobile Phone Firms Thrive Despite Chaos*, REUTERS, Nov. 3, 2009, <http://af.reuters.com/article/investingNews/idAFJ0E5A20DB20091103>.

⁷⁸ See BRIANNA FITCH & RICK NELSON, CENTER FOR STRATEGIC AND INTERNATIONAL STUDIES: HOMELAND SECURITY PROGRAM, *COMBATING PIRACY: CHALLENGES AND OPPORTUNITIES FOR REGIONAL AND PRIVATE-SECTOR INVOLVEMENT* (2012), available at <http://csis.org/publication/combating-piracy-challenges-and-opportunities-regional-and-private-sector-involvement>.

⁷⁹ *Id.*

able to target the root causes of piracy by building regional capacity and engaging the public in the fight against piracy.⁸⁰ However, although many international organizations and foreign authorities have taken maritime efforts to combat piracy in the Arabian Sea, such international actors are reluctant to engage in onshore efforts that may undermine the sovereignty of countries in East Africa.⁸¹ A piracy rewards program can be best classified as an onshore initiative because it focuses more on gathering information than patrolling the oceans.⁸² Therefore, regional authorities are in a strong position to implement a rewards program similar to RFJ, and may have many advantages compared to international or foreign authorities.⁸³ Since implementing a rewards program requires an ability to reach the public and to advertise in key areas, regional authorities would have the strongest on-the-ground capability to disseminate information to the public.

However, regional authorities without international backing and oversight are “contained by limited resources and difficulties gaining access to the supplies they need to improve governance, infrastructure, stability, law enforcement, and judicial capabilities.”⁸⁴ They are “undertrained, underequipped, under supported,” and “unlikely to succeed without outside resources.”⁸⁵ For a regional authority to be the potential administrator of an East African anti-piracy program, it must have the capability to disseminate information to the public, regional and international legitimacy, and funding. This analysis shows where regional authorities fall in terms of these capabilities and proposes that a body with heavy on-the-ground regional influence and outside funding administer such a program.

B. Capacity of Regional Authorities and Basis of Analysis

Existing regional anti-piracy initiatives come in two frameworks. The first includes anti-piracy initiatives implemented exclusively by African continental or inter-continental groups.⁸⁶ The second includes multilateral initiatives that contain heavy African involvement.⁸⁷ An organization falling under the latter framework would be the best suited to implement an anti-piracy rewards program.

Oceans Beyond Piracy, a project that was launched by a Colorado-based NGO in 2010⁸⁸ has compiled a “Counter-Piracy Activities Matrix” (“Capacities Matrix”) by assessing the capabilities of regional and international anti-piracy groups in the categories of naval operations, vessel self-protection, relieving the plight of seafarers, counter-piracy messaging, regional

⁸⁰ *Id.*

⁸¹ *Id.*; This trend is slowly changing and may erode good will in the area, see James Bridger, *The EU's Misguided Move to Fight Pirates Onshore*, PIRACY STUDIES: ACADEMIC RESEARCH ON CONTEMPORARY MARITIME PIRACY, May 11, 2012, <http://piracy-studies.org/2012/the-eus-misguided-move-to-fight-pirates-onshore/>.

⁸² BRIANNA FITCH & RICK NELSON, *supra* note 78.

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ See Oceans Beyond Piracy, Counter-Piracy Activities Matrix, <http://oceansbeyondpiracy.org/matrix/counter-piracy-activities-dynamic>.

⁸⁷ *Id.*

⁸⁸ See One Earth Future, Oceans Beyond Piracy, http://oneearthfuture.org/index.php?id=48&pid=37&page=Oceans_Beyond_Piracy.

response, Somali engagement, rule of law, and coordination.⁸⁹ Oceans Beyond Piracy has the goals of “mobilizing stakeholders from the maritime community, developing public-private partnerships to promote long-term solutions at sea and ashore, and sustainable deterrence based on the rule of law.”⁹⁰ It works closely with stakeholders and experts to come up with counter-piracy solutions.⁹¹ The Capacities Matrix is a tool that analyzes current anti-piracy initiatives. According to Jens Vestergaard Madsen, the Associate Director and Oceans Beyond Piracy, “one of [the project’s] ideas...was that by showing which areas different actors were focusing on, it would be possible to identify any gaps and potential duplication in effort.”⁹² This Capacities Matrix serves as the basis for the analysis set forth in this section.

The data in the Capacities Matrix is taken from the websites of the organizations that the matrix maps.⁹³ The matrix is a means of synthesizing information already in existence and presenting the information as a gateway so that visitors can see the capabilities organizations have.⁹⁴ Several of the capabilities assessed in the Capacities Matrix are also capabilities a regional organization would need in order to administer an anti-piracy rewards program. More specifically, capabilities such as counter-piracy messaging, rule of law, coordination, regional response, and Somali engagement are instrumental to implementation and management of a successful anti-piracy rewards program.⁹⁵ The sections below explain how each of these functions would be useful in administering the RFJ-modeled program and assesses the ability of existing regional organizations to implement such a program.

a. Counter-Piracy Messaging (Advertising)

“Counter-Piracy Messaging,” as the term is used by Oceans Beyond Piracy in the Capacities Matrix, denotes the ability of an anti-piracy initiative to engage with the public.⁹⁶ The RFJ program is heavily dependent on public involvement.⁹⁷ It solicits “actionable information from informants” and uses “posters, matchbooks, paid advertisements on the radio and newspapers, and any other appropriate avenue” to reach potential informants.⁹⁸ These functions show that an ability to reach the public is a central component of RFJ. However, the “counter-piracy messaging” category of the Capacities Matrix is one the most sparsely populated fields, despite being one of the most important to an anti-piracy program.⁹⁹

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² E-mail from Jens Vestergaard Madse, Associate Director, Oceans Beyond Piracy (Aug. 13, 2012) (on file with author).

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ See Counter-Piracy Activities Matrix, *supra* note 86.

⁹⁶ *Id.*

⁹⁷ *Id.*; see Contact Group on Piracy off the Coast of Somalia, About CGPCS: Structure, <http://www.thecgpcs.org/about.do?action=structure>.

⁹⁸ Frequently Asked Questions, *supra* note 5.

⁹⁹ Counter-Piracy Activities Matrix, *supra* note 86.

The Capacities Matrix indicates that only a limited number of current anti-piracy organizations, international or regional, possess a strong Counter-Piracy Messaging capability.¹⁰⁰ One of the most advanced organizations in terms of Counter-Piracy Messaging is the Contact Group on Piracy off the Coast of Somalia (“CGPCS”), an international organization with heavy regional involvement in efforts to curb piracy.¹⁰¹ CGPCS consists of members from multiple countries as well as international organizations,¹⁰² and has a designated working group that focuses on using “various means of communication and education” to reach the public.¹⁰³ Most importantly, CGPCS targets the general public and members of the Somali community in spreading an anti-piracy message.¹⁰⁴

No purely regional authority appears to have robust messaging resources to the same extent as CGPCS. The only regional organization that has an advanced counter-piracy messaging capability is the African Union (“AU”),¹⁰⁵ a continental organization consisting of 53 member states established to equip African countries to integrate into the global economy and address political, social, and economic problems.¹⁰⁶ AU’s main objective is to promote unity and cooperation amongst African states, and its anti-piracy efforts range from regional capacity building to on-the-ground operations aimed at disrupting pirate activity.¹⁰⁷

As of July 16, 2012, the only other organization (besides AU and CGPCS) recognized by the Capacities Matrix as having the capacity to implement an effective anti-piracy messaging program is NATO.¹⁰⁸

b. Rule of Law and Coordination (Legitimacy)

RFJ is able to operate because of what the Capacities Matrix refers to as “Rule of Law and Coordination,” which measures a program’s perceived legitimacy in its ability to effectively combat piracy.¹⁰⁹ In order to administer Rewards for Justice, several United States agencies coordinate efforts; RFJ also involves United States coordination with other countries, as “every government and every citizen has a stake in bringing terrorists to justice and preventing acts of terrorism.”¹¹⁰

¹⁰⁰ *Id.*

¹⁰¹ See About CGPCS: Structure, *supra* note 97.

¹⁰² *Id.*

¹⁰³ Contact Group on Piracy off the Coast of Somalia, Working Group, <http://www.thecgpcs.org/work.do?action=workSub4>.

¹⁰⁴ *Id.*

¹⁰⁵ See Counter-Piracy Activities Matrix, *supra* note 86.

¹⁰⁶ African Union, AU in a Nutshell, <http://au.int/en/about/nutshell>.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ See Frequently Asked Questions, *supra* note 5.

¹¹⁰ Rewards for Justice, Program Overview, http://www.rewardsforjustice.net/index.cfm?page=Rewards_program&language=english.

A potential regional administrator of an East African anti-piracy program must also have Rule of Law and Coordination abilities.¹¹¹ The administrator's actions must be considered legitimate and accepted as such by the regional and international communities. In addition, it must be able to guarantee both confidentiality and possible relocation for informants in danger, two central aspects of RFJ.¹¹² Coordination between sovereigns, coalitions, and international security and intelligence groups is also essential in the piracy context because of the vast amount of ocean implicated (over 1.1 million square nautical miles of high-risk area).¹¹³

Per the Capacities Matrix, AU is one of several regional organizations that have both rule of law and coordination capabilities¹¹⁴

c. Regional Response and Somali Engagement (Capacity Building)

Because pirate bases are located in and fueled by the unrest in Somalia, any regional administrator of an anti-piracy program must be able to engage with the Somali security forces and its people.¹¹⁵ Also, because piracy is regional in both its sources and impact, a potential administrator must also be able to engage in capacity building and development activities on a regional level.¹¹⁶ Very few organizations on the Capacity Matrix have a solid plan for both regional response and Somali engagement. The only regional organizations with these capabilities are AU and the Djibouti Code of Conduct.¹¹⁷

C. Funding

The potential regional administrator of an East African anti-piracy program would likely need outside assistance.¹¹⁸ The Center for Strategic and International Studies writes that

¹¹¹ See Press Release, Security Council, Counsel Takes up Secretary-General's Report on Specialized Anti-Piracy Courts, U.N. Doc. SC/10551 (Feb. 12, 2012), *available at* <http://www.un.org/News/Press/docs/2012/sc10551.doc.htm>. "While the United Kingdom supported, in principle, the report's implementation proposals to increase capacity through specialized anti-piracy courts in Somalia, continuing the broader exercise of building regional capacity remained essential. . . the threat of piracy, the effects of the famine and terrorism in Somalia were all symptoms of one central problem: the breakdown of the Somali State. Tackling piracy and its causes could not be separated from that fact, and the international community needed to address the on-land issues that fed criminality at sea, including through deterrence, security and the rule of law." See also UNODC and Piracy, *supra* note 62. "It is clear that the only viable long-term solution to the Somali piracy problem is to restore law and order in Somalia (including in its waters). . . It is also clear that this solution is some years off and will require concerted and coordinated international effort. Piracy is feeding off the instability, weak governance and poverty that plague Somalia. By strengthening the rule of law to combat piracy. . . UNODC is also helping Somalia rebuild a more just and stable society for all its citizens."

¹¹² See Frequently Asked Questions, *supra* note 5.

¹¹³ See BRIANNA FITCH & RICK NELSON, *supra* note 78; Contact Group on Piracy off the Coast of Somalia, Background, <http://www.thecgps.org/about.do?action=background>.

¹¹⁴ See Counter-Piracy Activities Matrix, *supra* note 86.

¹¹⁵ See UNODC and Piracy, *supra* note 62.

¹¹⁶ See Background, *supra* note 113. "Piracy implicates a destabilizing effect in Somalia and the entire region owing to rising prices, insecurity of energy supplies, and loss of revenue."; see also Press Release, *supra* note 111. (Explaining that regional capacity building is viewed as the "most effective way to prosecute pirates in the short term").

¹¹⁷ See Counter-Piracy Activities Matrix, *supra* note 86.

¹¹⁸ See BRIANNA FITCH & RICK NELSON, *supra* note 78.

“without significant outside assistance... local, on-the-ground efforts considered vital to countering the threat of piracy by the U.N. and others, are unlikely to succeed.”¹¹⁹

A relevant model that solves the tension between the on-the-ground capabilities of local organizations and funding needed from outside sources is the African Union Mission in Somalia (AMISOM). AMISOM is a regional peacekeeping body run by AU and approved by the U.N.¹²⁰ It operates onshore to disrupt pirate bases and operations.¹²¹ Although AMISOM is a regional body, most of its funding comes from outside the region,¹²² including outside support for infrastructure, planning, operations, medical supplies, and capacity building.¹²³ It receives support from the U.S., the United Kingdom, Japan, Sweden, Italy, EU, China, Arab League, and NATO.¹²⁴ It may be useful for a potential regional administrator of an anti-piracy program to study the structure and administration of AMISOM as a model for utilizing on-the-ground capabilities while also providing for funding and resources from outside sources.

D. Recommendations and Further Questions

An organization such as CGPCS or AU would be a strong candidate for administering a program similar to RFJ in the piracy context. CGPCS is an international program with strong participation by African states. It has counter-piracy messaging capabilities, rule of law and coordination capacities, and an ability to engage in capacity building in Somalia and the broader region. Since it has a strong local presence, it would be able to implement the on-the-ground activities needed to advertise and administer a program like RFJ while also receiving funding from outside sources.

AU is a regional authority that works closely with other countries and international bodies. It also has capabilities for counter-piracy messaging, rule of law and coordination capacities, and the ability to engage in on-the-ground operations. Moreover, AU has had experience administering AMISOM, a regional peacekeeping mission that has already been successful in disputing pirate operations onshore.

In further exploring the option of establishing a regional piracy rewards program, regional authorities should address the following important considerations:

¹¹⁹ *Id.*

¹²⁰ See African Union Mission in Somalia, AMISOM Financial Support, http://www.africa-union.org/root/au/auc/departments/psc/amisom/amisom_Financial.htm.

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Id.*

1. Does a potential regional administrator of an anti-piracy program in East Africa have sufficient piracy-counter messaging, rule of law, coordination, and capacity building capabilities?
2. Will the regional administrator be able to secure sufficient funding?
3. Are there other options that can help alleviate any deficiencies inherent in a regional program (e.g., private-sector involvement)?¹²⁵

VI. PROPOSAL FOR A PRIVATE-SECTOR PIRACY REWARDS PROGRAM

A. Overview

While the organization and administration of a rewards program similar to RFJ could be handled by U.N. agencies or a regional intergovernmental agency, there are various non-profit industry organizations that may also be capable of undertaking the task. Among the three major international maritime organizations—the International Maritime Bureau, the Baltic and International Maritime Council, and the International Association of Independent Tanker Owners¹²⁶—the International Maritime Bureau (“IMB”) has the most experience and resources to define the scope and administer a piracy information rewards program.

B. The IMB

The IMB is a non-profit organization that is a part of the ICC Commercial Crime Services (“ICC CCS”), the anti-crime arm of the International Chamber of the International Chamber of Commerce.¹²⁷ IMB was established in 1981 to act as a central point in coordinating the fight against all types of maritime crime and malpractice.¹²⁸ The International Maritime Organization (“IMO”) (a U.N. specialized agency with responsibility for the safety and security of shipping and the prevention of marine pollution by ships¹²⁹), in resolution A 504 (XII) (5) and (9) adopted November 20, 1981, has endorsed the IMB and, *inter alia*, urged all governments, all interests and organizations to cooperate and exchange information with each other and the IMB with the goal of maintaining and developing coordinated action in combating maritime fraud.¹³⁰ The IMB has a memorandum of understanding with the World Customs Organization and has observer status with INTERPOL.¹³¹

¹²⁵ See BRIANNA FITCH & RICK NELSON, *supra* note 78.

¹²⁶ See International Maritime Bureau, Commercial Crime Services, a Division of the ICC, <http://www.icc-ccs.org/icc/imb>; see also Baltic and International Maritime Council, <https://www.bimco.org/>; see also International Association of Independent Tanker Owners, <http://www.intertanko.com>

¹²⁷ ICC Commercial Crime Services (CCS), Commercial Crime Services, a Division of the ICC, <http://www.icc-ccs.org/>.

¹²⁸ International Maritime Bureau, *supra* note 126.

¹²⁹ IMO | About IMO, Introduction to IMO, <http://www.imo.org/About/Pages/Default.aspx>.

¹³⁰ International Maritime Bureau, *supra* note 126.

¹³¹ *Id.*

Although IMB's main task is to protect the integrity of international trade by seeking out fraud and malpractice, one of its principal areas of expertise is the suppression of piracy.¹³² In 1992, long before the maritime piracy became a highly publicized media topic, the IMB created the IMB Piracy Reporting Centre ("PRC") based in Kuala Lumpur, Malaysia.¹³³ PRC serves as the single point of contact for ship owners who are under piratical or armed robbery attack by accepting incident reports and maintaining round-the-clock watch on the world's shipping lanes, reporting pirate attacks to local law enforcement, and issuing warnings about piracy to all vessels in the relevant ocean region.¹³⁴ PRC is involved in information-sharing with industry, law enforcement, governments and flag states in an attempt to reduce and ultimately eradicate the crime of piracy,¹³⁵ and its services are free and are funded solely by donations.¹³⁶ PRC's information and industry reach would be beneficial assets and a first step in setting up a rewards program for the reporting of piracy related information. PRC's anti-piracy efforts build on frameworks established by other organizations, including the U.N., and PRC follows the definition of "piracy" as expressed in Article 101 of the 1982 U.N. Convention on the Law of the Sea.¹³⁷ While both the IMB and the IMO provide regular statistical data and reports on piracy, IMO data is provided by member governments and international organization, while IMB reports are based on the data provided to the PRC.¹³⁸

As part of the ICC CCS, IMB has access to resources necessary to establish and administer a rewards program. In addition to collecting and distributing information itself, PRC also works with the other regional information centers to collect and distribute information related to pirates' activity worldwide and also facilitates financing of such regional centers.¹³⁹ Moreover, IMB already provides investigation services to the industry,¹⁴⁰ and its experience in international maritime crime investigations would be valuable in setting up the piracy information rewards program.

¹³² *Id.*

¹³³ IMB Piracy Reporting Center, Commercial Crime Services, a division of the ICC, <http://www.icc-ccs.org/piracy-reporting-centre>.

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ *See Id.*; *see also* Piracy and armed robbery against ships, International Maritime Organization, <http://www.imo.org/ourwork/security/piracyarmedrobbery/pages/default.aspx>.

¹³⁸ *See Silvia Ciottu Galletti*, Understanding Security, Old and New Threats: Piracy and Maritime Terrorism, EuroCrime, 1, available at <http://community.middlebury.edu/~scs/docs/Galletti-Piracy.%20Old%20and%20New%20Threats.pdf>.

¹³⁹ *See* Piracy off the Horn of Africa, Congressional Research Service, 25, 7-5700, R40528, April 27, 2011, available at <http://www.fas.org/sgp/crs/row/R40528.pdf>; *see also* Rebecca L. Law, Maritime Piracy off the Coast of Somalia, 23, May 2011, available at https://portal.mmowgli.nps.edu/c/wiki/get_page_attachment?p_1_id=33393&nodeId=10773&title=Masters+Theses&fileName=Masters+Theses%2FLawThesisSomaliPiracyCsumbPanettaInstituteJune2011.pdf.

¹⁴⁰ Investigation Services, Commercial Crime Services, a division of the ICC, <http://www.icc-ccs.org/icc/imb/services>.

C. Advantages

1. Industry Interests

International shipping companies and insurance companies have the most interest in fighting piracy as they suffer direct economic losses from pirates' activities. Instead of establishing yet another international agency or, alternatively, handing the responsibility for administering the information gathering to an existing international agency within the U.N. structure, it is logical to allow the industry to coordinate intelligence gathering efforts to protect itself. IMB activity to date is a good example of how well private industry is able to self-organize and effectively manage efforts to protect its own interests. Moreover, industry participants will likely be more eager to finance a non-governmental organization due to their ability to direct benefit from the activity of the organization that they manage and assumptions about efficiency and a lower level of bureaucracy. This would eliminate additional financial burden on the U.N. and its member states stemming from the piracy problem. Arguably, administration of the rewards program would also be more efficient with direct industry interest and participation.

2. Existing Infrastructure and Experience

IMB's experience makes it a well-qualified candidate to establish and administer an anti-piracy rewards program. It has been in existence for over 25 years and has used industry knowledge, experience, and access to a large number of well-placed contacts around the world to facilitate information-gathering related to piracy incidents through the PRC. Establishing an anti-piracy rewards program would be a logical step in expanding the scope of the PRC since there is an overlap of the already existing PRC functions, such as the organization of the information gathering, with the functions of the potential piracy information rewards program. In fact, IMB has already reported one case of a successful experience in offering rewards for information about the location of a hijacked vessel.¹⁴¹

3. Publicity

As an affiliate of the ICC, IMB will have an opportunity to approach the ICC members as well as its own members with the request to publicize the piracy information rewards program. Such access to the industry members who would directly benefit from the success of the program does increase the probability of the successful publicity campaign which would result in the wide awareness of the program among the people who might possess valuable intelligence.

4. Enforcement

While IMB is able to act independently on gathered intelligence, its experience working with local law enforcement agencies is an additional benefit. Because establishing efficient interaction with multiple local enforcement agencies from scratch takes time and effort, IMB's

¹⁴¹ See Reward offered for information leading to ship Discovery, STAR KYODO NEWS INTERNATIONAL, INC., 1999, <http://www.thefreelibrary.com/Reward+offered+for+information+leading+to+ship+discovery.-a057432431>; see also Mark Bruynee, Report in 2000: January – March, by, April, 2000, available at <http://home.wanadoo.nl/m.bruyneel/archive/modern/2kreport.htm>.

existing relationships with law enforcement in various nations will help to ensure that the intelligence obtained gets to the appropriate agencies quickly and efficiently, thereby saving significant time and resources. Moreover, local industries in each country affected by piracy should be able to assist in lobbying for governments act on the intelligence because of the related economic losses resulting from the piracy activities. Additionally, the separation of intelligence-gathering from enforcement helps to ensure that there will be less potential for abuse of the rewards program. IMB will be incentivized to ensure that the information they provide to the local enforcement agencies is sufficient for law enforcement to act upon. Since the IMB is not a part of the global bureaucracy and does not have any enforcement capabilities and legal authority, its intelligence gathering activity and administration will be more efficient than of a U.N. organization or any other international organization formed by the governments. Efficient interaction with the local enforcement agencies might also benefit gathering the intelligence from the local sources with the assistance from such local enforcement agencies.

D. Disadvantages

1. Trust and Legitimacy

A piracy information rewards program run by private industry actors may have difficulty gaining the trust of people who have information about pirates' activities due to lack of perceived legitimacy, as well as due to concerns from potential informants of a private organization's ability to handle the sensitive information and preserve confidentiality. Unlike dealing with a national government or U.N. agency, it may be unsafe and illegal to disclose such information to a non-governmental entity. Moreover, having a private organization determining who gets an award for providing certain information may be negatively perceived as bounty hunting. As such, the biggest obstacles for a private-sector piracy rewards program are gaining public trust, legitimacy and sufficient authority for its activity.

These obstacles may be addressed by the U.N. or other intergovernmental agency providing authority to IMB in running and administering the piracy information rewards program or endorsing IMB's administration of such program. For example, as it did when it endorsed the creation of IMB,¹⁴² the IMO may consider passing a resolution endorsing IMB's creation of an anti-piracy rewards program and encouraging governments to cooperate with IMB on matters related to the program. While this resolution would be of an advisory rather than authoritative character, it may address the local governments' trust and legitimacy concerns to a certain extent. A stronger but more complicated solution would require the U.N. to obtain a legislative mandate¹⁴³ for establishing the piracy information rewards program and then, under certain conditions, transferring its authority to run such program to IMB (similar to the program for establishing Iraq's oil expenditures¹⁴⁴). Examples of such conditions may include meeting a set of the program requirements, such as having an appropriate mechanism for determining awards

¹⁴² Barratry, Unlawful Seizure of Ships and Their Cargoes and Other Forms of Maritime Fraud, The International Maritime Organization resolution A 504 (XII) (5) and (9) adopted on 20 November 1981, *available at* [http://www.imo.org/blast/blastDataHelper.asp?data_id=22365&filename=A504\(12\).pdf](http://www.imo.org/blast/blastDataHelper.asp?data_id=22365&filename=A504(12).pdf).

¹⁴³ See Executive Summary Mandating & Delivering, <http://www.un.org/mandatereview/executive.html>.

¹⁴⁴ Resolution 1483 (2003) adopted by the Security Council at its 4761st meeting, May 22, 2003, <http://daccess-dds-ny.un.org/doc/UNODC/GEN/N03/368/53/PDF/N0336853.pdf?OpenElement>.

eligibility to minimize abuse the goals of the program. While setting up such mechanics may be highly complicated, this method will best address the trust, legitimacy and authority concerns. Alternatively, the IMO may simply “hire” IMB to administer the program.

2. Relocation and Protection of the Individuals Providing Intelligence

IMB will not have the ability to protect its sources of information or to assist with the relocation. To a certain degree this may be addressed through the interaction of IMB with U.N. agencies and governments acting on enforcement on the basis of the received intelligence.

3. Local Laws

As a non-governmental organization, IMB may face challenges working with individuals from various governments due to the potential conflicts with local laws and lack of perceived authority compared to international organizations founded by national governments. The intelligence-collection and payment of the rewards by a foreign organization in certain jurisdictions may be defined as an illegal spying activity and local informers may be prosecuted for treason.¹⁴⁵ Additionally, depending on the jurisdiction and the nature of information provided, local privacy laws may apply to such information creating additional obstacles in administering the rewards program. Finally, the local enforcement agencies might refuse to act based on the provided intelligence due to corruption or laws requiring them to independently verify intelligence provided from the foreign sources. These potential problems highlight the importance of the efficient interaction with the local governments and ensuring that IMB has sufficient authority to conduct its activities with respect to the program in various countries. As discussed above, this can be mitigated either by establishing a U.N. program and passing the administration of the program to IMB, or having the U.N. endorse an IMB program or grant authority to IMB. Additionally, to some extent, this issue may be mitigated through coordination with international organizations with appropriate authority, such as INTERPOL, in conducting the information collection activities.

E. Recommended Further Action

To further pursue development of a private-sector run piracy rewards program, PILPG should consider taking the following actions:

- 1) Exploring IMB’s potential interest in establishing and administering the piracy information rewards program (both through interaction with IMB’s management and industry members).
- 2) Assisting IMB in defining the scope of the rewards program by providing information on government administered rewards programs (for example, RFJ).
- 3) Supporting IMB in setting up how received intelligence is communicated from IMB to the local law enforcement and international organizations

¹⁴⁵ See *Pakistan jails doctor who helped CIA find Bin Laden*, BBC, May 23, 2012, <http://www.bbc.co.uk/news/world-asia-18175964>.

involved in capturing pirates and individuals coordinating or assisting pirate activity.

- 4) Working with the U.N. on structuring various options that would allow IMB to administer and run the program in away that addresses the trust and legitimacy concerns of the general public.

VII. PIRACY AND HUMAN RIGHTS

It appears that no particular human rights questions are directly raised by offers of rewards for information that could be used to combat piracy. Human rights violations may occur, however, once intelligence is received through an RFJ-modeled piracy rewards program and used to inform law enforcement efforts that aim to suppress acts of armed robbery at sea. The treatment of captured pirates – in terms of arrest, detention, and prosecution – must adhere to international human rights law.

Some prominent conventions relevant to piracy include the 1984 Convention Against Torture (“CAT”), the 1966 International Covenant on Civil and Political Rights (“ICCPR”), and the 1950 European Convention on Human Rights (“ECHR”). CAT and ICCPR were drafted by the United Nations Commission on Human Rights and adopted by the U.N. General Assembly; the 1950 ECHR is an international treaty that was drafted by the Council of Europe, which consists of the European Court of Human Rights. Such international treaties place obligations on states to ensure that individual rights are protected even as states pursue the capture of pirates. The U.N. has published various Security Council Resolutions (“UNSCR”) addressing the manner in which state action is conducted. For example, UNSCR 1851 permits Somalia to suppress piracy but also requires compliance with applicable international humanitarian and human rights laws.

A. Detention

Piracy suspects apprehended by national or international authorities are detained and often transferred to a regional state for prosecution. For example, over 100 piracy suspects have been sent to Kenya for their trials, France sends suspects to Puntland, China delivers them to Somalia, and both the UK and EU have transfer agreements with the Seychelles.¹⁴⁶ This transfer process introduces human rights concerns. For one, suspects in custody cannot be sent to a place where they have a well-founded fear of persecution on a ground like race, religion, nationality, or membership in a social or political group. CAT requires that no party “expel, return, (*refouler*) or extradite a person to another state where there are substantial grounds for believing that he would be in danger of being subjected to torture.”¹⁴⁷ A similar requirement is relayed by Article 3 of the ECHR, which prohibits *refoulement* to face torture or “inhuman or degrading treatment

¹⁴⁶ See Douglas Guilfoyle, *Counter-Piracy Law Enforcement and Human Rights*, 59 CAMBRIDGE J. 141-169 (2010).

¹⁴⁷ United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, 1465 UNT.S. 85 art. 3(1).

or punishment.”¹⁴⁸ Lastly, CAT demands serious scrutiny of any proposed transfer to a state that consistently commits flagrant or mass violations of human rights.

Once piracy suspects are transferred, their fair trial rights must be maintained. Fair trial guarantees are drawn from ICCPR Article 14 and ECHR Articles 5 and 6,¹⁴⁹ which require states to bring a transferred person promptly before a judicial authority to determine the legality of his detention. Moreover, states are responsible for upholding each suspect’s rights to the following: (i) trial within a reasonable time, (ii) trial in a fair and public hearing by an impartial and independent tribunal, (iii) the presumption of innocence, (iv) information about one’s charges, (v) the chance to prepare a defense, (vi) an interpreter, (vii) silence, and (viii) review as to sentence by a higher court.

B. Monitoring

Monitoring arrangements present another human rights-relevant area of the law enforcement process of suppressing piracy. Both ECHR and CAT share the position that mere words of assurance are insufficient in protecting a transferee against the risk of prohibited treatment.¹⁵⁰ Indicators of an acceptable assurances regime include “thorough examination of the merits of each individual case,” as well as establishment and implementation of “clear procedures for obtaining such assurances, with adequate judicial mechanisms for review, and effective post-return monitoring arrangements.”¹⁵¹ UK practices exemplify what exactly post-return monitoring would involve; in their deportation cases, the state ensures that a trained human rights monitor accompanies the individual from the UK to the country of return, is available for contact by the transferee 24/7 and contacts the individual weekly, makes frequent and unannounced visits to the person if in detention, and arranges for prompt medical inspections regarding health concerns.¹⁵² Before post-return monitoring, a detailed investigation of post-arrival procedures experienced by the transferee also should be conducted. A human rights monitor should examine where the individual will go, be detained, be tried, and be held if convicted.¹⁵³

The EU-Kenya Agreement serves as an example of piracy law enforcement that applies these conditions and modalities for transferring and treating suspects. In 2009, the EU entered into an agreement with Kenya to transfer Somali pirates that the EU captured into Kenyan custody for prosecution and imprisonment; the EU in exchange would offer logistical and legal support to Kenya.¹⁵⁴ Somalia’s legal system is unable to host trials after their 18 years of civil war, and Kenya is considered well-positioned geographically for receiving arrested suspected

¹⁴⁸ Convention for the Protection of Human Rights and Fundamental Freedoms, Sept. 3, 1953, 213 UNT.S. 221 art. 3.

¹⁴⁹ See International Covenant on Civil and Political Rights, Dec. 16, 1966, S. Exec. Rep. 102-23, 999 UNT.S. 171.

¹⁵⁰ See Saadi v. Italy, § 148, Eur. Ct. H.R. (2008).

¹⁵¹ OFFICE OF THE HIGH COMM’R FOR HUMAN RIGHTS, CONCLUSIONS AND RECOMMENDATIONS OF THE COMMITTEE AGAINST TORTURE (UNITED STATES OF AMERICA), U.N. DOC CAT/C/USA/CO/2 (2006) para. 21.

¹⁵² See Kate Jones, *Deportations with Assurances: Addressing Key Criticisms*, 57 INT’L & COMP. L.Q. 183 (2008).

¹⁵³ *Id.* at 187.

¹⁵⁴ See Kayleigh Shebs, *EU, Kenya Reach Pirate Prosecution Agreement*, JURIST, Mar. 6, 2009, <http://jurist.org/paperchase/2009/03/eu-kenya-reach-pirate-prosecution.php>.

pirates in the Gulf of Aden. Kenya also signed prisoner transfer accords with the U.S., the U.K., and Denmark in 2009. The EU-Kenya Agreement established post-transfer monitoring mechanisms expected by CAT by requiring that Kenya document and report each individual's physical condition (and any allegations of improper treatment), places of detention, charges, and significant decisions taken in the course of the individual's prosecution and trial.¹⁵⁵ Moreover, EU and European Union Naval Force Somalia ("EUNAVFOR") representatives were given access to, as well as the authority to question, any transferred persons in custody. Measures like these gave the EU both the capability to check Kenya's law enforcement system and the responsibility to oversee their own captures.

Nevertheless, even with monitoring arrangements like those described above, human rights violations can still occur. Five months after the treaty allowing the EU to transfer suspected Somali pirates to Kenya for trial went into effect, allegations arose stating that the agreement violated human rights. Paris-based legal aid network Lawyers of the World wrote to the UN, the EU's anti-piracy force, and Kenya's Foreign Ministry, demanding formation of a joint committee that would monitor performance of the agreement and ensure that suspects were cared for in custody and received credible trials.¹⁵⁶ Moreover, CAT has previously noted that the Kenya National Commission on Human Rights faced difficulties in "freely access[ing] and monitor[ing] places of detention"¹⁵⁷ in the country. In October 2010, Kenya ended its agreement with the EU to prosecute suspected Somali pirates, stating that they did not receive adequate support from the international community.¹⁵⁸

The European Court of Human Rights has held that assurances without monitoring procedures are insufficient.¹⁵⁹ Nevertheless, as the EU-Kenya Agreement and the events surrounding the state's accord demonstrate, monitoring arrangements are not sufficient for protecting individuals' human rights. While requiring states to constantly track their actions can help prevent an extradited person from becoming subject to police torture or very poor prison conditions, states must constantly strive to improve the checks put in place on their legal and criminal justice systems.

Imprisonment often gives rise to human rights claims because international crime suspects should be, but often are not, humanely detained. Detention facilities may have dire conditions, such as overcrowding, inadequate health services, and high levels of violence. For example, in 2008, CAT noted "with deep concern the numerous and consistent allegations of widespread use of torture and ill-treatment of suspects in police custody [in Kenya]."¹⁶⁰ People under arrest also may be denied basic detainee rights, finding it difficult to access lawyers,

¹⁵⁵ See EU-Kenya Agreement on Transfer of Pirates, 2009 O.J. (L79) 49-59, para. 5(c), available at [http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:22009A0325\(01\):EN:HTML](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:22009A0325(01):EN:HTML).

¹⁵⁶ See Sarah McGregor, *EU, Kenya Somali-Pirate Treaty 'Violates Rights'*, *Lawyers Say*, BLOOMBERG, Aug. 19, 2009, http://www.bloomberg.com/apps/news?pid=newsarchive&sid=aDs_bA4DXiTg.

¹⁵⁷ COMMITTEE AGAINST TORTURE, CONCLUDING OBSERVATIONS OF THE COMMITTEE AGAINST TORTURE: KENYA, U.N. DOC CAT/C/KEN/CO/1 (2008) paras. 14 and 15.

¹⁵⁸ See Lillian Leposo, *Kenya Ends Agreement with EU to Prosecute Suspected Somali Pirates*, CNN, Oct. 3, 2010, http://articles.cnn.com/2010-10-04/world/kenya.eu.pirates_1_somali-pirates-kenyan-authorities-kenya-s-ministry?_s=PM:WORLD.

¹⁵⁹ See *Soldatenko v. Ukraine*, § 71-74, Eur. Ct. HR (2008).

¹⁶⁰ COMMITTEE AGAINST TORTURE, *supra* note 157, at para. 13.

receive medical examinations, and contact family members. Availability of prison capacity continues to be a bottleneck to piracy prosecutions in the region.

While an RFJ-modeled piracy rewards program does not directly raise human rights questions, quite a few human rights issues are involved in states' efforts to deter piracy, and the effect on human rights should be considered in the implementation of any anti-piracy program. Because the information acquired through such a program may assist states with the capture of pirates, the methods by which states apply this actionable intelligence and whether or not they operate in accordance with relevant international human rights law may be matters of concern.

VIII. CONCLUSION

This paper surveys four potential alternatives for establishing a rewards program for obtaining information on the perpetrators of piratical acts: (1) expansion of the existing U.S. Rewards programs to address piracy, (2) establishment of a U.N. agency administered rewards program; (3) establishment of an awards program administered by a regional intergovernmental organization; and (4) establishment of an awards program administered by a private-sector industry group. The various advantages and disadvantages of these proposed alternatives should be carefully examined in making a determination in how an East African anti-piracy rewards program should be administered.

The key advantage of a U.S.-based rewards program is that it would be an expansion of an existing program with established procedures, infrastructure and known successes. If advocacy groups act quickly, this option may be more feasible and realistic than expected since there is currently legislation pending in Congress for the expansion of the RFJ program to address "transnational organized crime." Key disadvantages of the U.S.-based approach are lack of piracy-specific focus, the perception that the U.S. would be acting unilaterally, and that this approach would depend on the willingness of the U.S. to shoulder the administrative and financial burden of a piracy rewards program.

The key advantages of a U.N.-administered rewards program are the U.N.'s international legitimacy and strong partnerships with member states, as well as the UNODC's existing expertise on suppressing piracy and UNPOS's presence on the ground in Somalia. The key disadvantage is that an entire new program would need to be established.

A regional initiative may be preferable to a fully international approach because of the importance of local support and cooperation with a rewards program, since it would be an "onshore" effort to combat piracy; however, regional capabilities appear limited at present and a regional piracy rewards program would require international support.

Finally, it appears that a private-sector rewards program may also be a viable option. Industry groups have the expertise and seem sufficiently incentivized to administer a rewards program. The disadvantage with the private sector approach is lack of credibility and authority. These problems can possibly be addressed by deriving a mandate or lesser endorsement from the U.N.

PILPG should engage the potential administering organizations of each of the four approaches to determine which is the most feasible and realistic, while also addressing any

human rights issues that may arise under any proposed plans. Establishment of a rewards program for information does not directly raise any human rights issues, but how the intelligence obtained is used and any resulting trial or detention of suspected pirates complies must comply with relevant international human rights law.